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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/769,838 01/25/01 PORTER

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EXAMINER

027964 MM91/1018  
HITT GAINES & BOISBRUN P.C.  
P.O. BOX 832570  
RICHARDSON TX 75083

PHAN, T

ART UNIT

PAPER NUMBER

2821

DATE MAILED:

10/18/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/769,838**

Applicant  
**Porter et al.**

Examiner  
**THO PHAN**

Art Unit  
**2821**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 25, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9, and 11-27 is/are rejected.
- 7) ☒ Claim(s) 3 and 10 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification and the claims.

### ***Information Disclosure Statement***

1. The U.S. Patent No. 5,111,407 has not been considered (the references should be placed on the form PTO-1449). Accordingly, the reference has not been cited in compliance with 37 CFR 1.98(b) and will not be made of record until the appropriate correction is provided. See MPEP 609.

### ***Claim Rejections - 35 USC § 112***

2. Claim 26 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, line 1, the language, "said balance circuit" lacks a proper antecedent basis.

### ***Double Patenting***

The non-statutory double patenting rejection, whether of the obvious-type or non-obvious-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of

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the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornam*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d).

Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-27 are rejected under the judicially created doctrine of double patenting over the U. S. Patent No. 6,181,294 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of

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the application which matured into a patent. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 4-5, 8-9, 11-12, 15-18, and 21-27 rejected under 35 U.S.C. 102(e) as being anticipated by Wolfe et al ('683).

Wolfe et al in figures 1-3 disclose an electric meter chassis 50 having a dielectric housing 52,54 protruding therefrom, an antenna 12 for allowing electric meter circuitry within the chassis to communicate wirelessly through the dielectric housing comprising a wireless communication circuit couplable to electric meter circuitry and an antenna element 12 located within the dielectric housing coupled to wireless communication circuit.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-7, 13-14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfe et al.

Wolfe et al have been discussed above but fail to teach the antenna is a dipole antenna and the wireless communication circuit has a carrier frequency of between 700 and 950 megahertz. However, the specific bands of operation would have been obvious in the art. Antennas and their elements are routinely "frequency scaled" and thus claims limitations are obvious design choices of wide bandwidth and matching variation with frequency as of interest.

### ***Allowable Subject Matter***

8. Claims 3 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

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None of the reference discloses the chassis comprises electric meter circuitry located in a circuit board rack within the dielectric housing, the antenna located between circuit boards in the circuit board rack such as required by claims 3 and 10.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patents to Cerny et al, Bloss et al and Reymond are cited as of interest and illustrate a similar structure to an antenna for electric meter assembly.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner THO G. PHAN whose telephone number is (703) 308-3051.

12. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 308-0956.

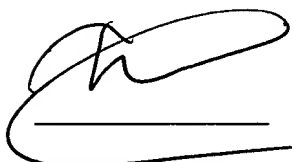
13. Papers related to Technology Center 2800 applications **only** may be submitted to Technology Center 2800 by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30

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(November 15, 1989). The Technology Center Fax Center number is (703) 308-7722 or (703) 308-7724.

A handwritten signature in black ink, appearing to be 'Tho G. Phan', written over a horizontal line.

THO G. PHAN

Patent Examiner

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October 9, 2001